No. 14

In the Supreme Court of the United States

OCTOBER TERM, 1944

R. J. THOMAS, APPELLANT

v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS

APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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OPINIONS BELOW

The opinion of the Supreme Court of the State of Texas (R. 318–327) is reported at 141 Tex. 591, 174 S. W. (2d) 958. The district court rendered no opinion; its order adjudging appellant in contempt may be found at R. 308–309.

JURISDICTION

The jurisdiction of this Court is invoked under Sections 237 (a) of the Judicial Code.

QUESTION PRESENTED

This brief is filed in response to the invitation of the Court to the Solicitor General. It is limited to discussion of the 5th question stated by the Court, namely: whether the application made of Section 5 of the Texas Act is consistent with the provisions of the National Labor Relations Act.

STATUTES INVOLVED

The statutes involved are House Bill No. 100, Acts Texas, 1943, 48th Leg., c. 104, p. 180 (Vernon's Ann. Tex. Stat. Art. 5154a) and the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*). The pertinent provisions of each statute are attached as appendices A and B, respectively, to this brief, pp. 43–44, 45–48, *infra*.

STATEMENT

The efforts of the Oil Workers International Union, Local 1002, affiliated with the C. I. O. (hereinafter called the Union), and of its predecessors, to organize the Baytown, Texas, refinery of the Humble Oil Company, have given rise to three successive proceedings before the National Labor Relations Board (hereinafter called the Board). In the first two proceedings the Board assumed jurisdiction, found that the company had committed unfair labor practices, and entered orders requiring the company to cease and desist

and to take certain affirmative action.[1] Before the company had complied with the order in the second proceeding, the third of these proceedings was instituted when the Union, on April 28, 1943, filed a petition requesting the Board to investigate and certify the Union as exclusive bargaining representative of these employees. Pursuant to this petition, the Board between July 15 and July 24, 1943, conducted a hearing to determine whether an election should be held to resolve the question affecting commerce which had arisen concerning the representation of the employees of the Baytown refinery[2] (R. 33–34).

Pending the Board's decision, the Union continued its organizing efforts among the employees of the Company and arranged to hold a "Victory

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[1] *Matter of Humble Oil & Refining Company*, 16 N. L. R. B. 112, 114–115, 116–134, enforced as modified, 113 F. (2d) 85 (C. C. A. 5); *Matter of Humble Oil & Refining Company*, 48 N. L. R. B. 1118, 1123, 1139, enforced, 140 F. (2d) 777 (C. C. A. 5).

[2] In its Decision and Direction of Election issued on October 27, 1943, in *Matter of Humble Oil & Refining Company*, 53 N. L. R. B. 116, 120, n. 7, the Board noted: "In a previous case involving the same parties, *Matter of Humble Oil & Refining Co.*, 48 N. L. R. B. 1118, the Board found that the Company had violated Section 8 (1) and (3) of the Act. To date there has been no compliance with the Board's Order in this matter. In view of unremedied unfair labor practices of the Company, we shall entertain the petition of the Oil Workers, although supported by a showing of representation less than that which we would require were there no special circumstances indicating that the petitioning union has been handicapped in its effort to secure signed designations as bargaining representative."

Rally" on the evening of September 23, 1943, in the city of Pelly, Texas, which is chiefly inhabited by employees of the Baytown Refinery (R. 5, 279). Appellant R. J. Thomas, president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (hereinafter called the U. A. W.) and one of the vice presidents of the Congress of Industrial Organizations, with which the U. A. W. is affiliated, was invited to come from his home in Detroit, Michigan, to address this meeting (R. 22–23, 33).

On September 22, 1943, shortly after appellant arrived (R. 34), Judge Gardner of the 53d District Court, Travis County, Texas, on complaint filed by the Attorney General of the state (R. 291–294), issued, ex parte, a temporary restraining order enjoining appellant while in the State of Texas from soliciting members in the Union or any other labor organization affiliated with the C. I. O. "without first obtaining an organizer's card as required by law," and also issued an order that appellant appear before him on September 25, 1943, 2 days after the scheduled meeting, to show cause why a temporary injunction should not issue (R. 294–295, 315–317). The temporary restraining order and the order to show cause were served on appellant at Houston, Texas, on September 23, 1943, approximately 5 hours prior to the meeting (R. 35). At the meeting, which was attended primarily by employees of the Baytown Refinery of the Humble Oil Company (R.

5, 37–39), appellant, despite the restraining order, and without having applied for or obtained an organizer's card (R. 10, 35–37), delivered a speech, in the course of which he explained the advantages of union membership, and solicited the employees in the audience generally, and one employee by name, to join the Union (R. 41, 279–290). At the close of the meeting, appellant was arrested for soliciting members for the Union without first obtaining a license as required by the Texas statute (R. 42). After entering a plea of not guilty, appellant was released on bond pending trial (R. 42). On the following day the District Court of Travis County, acting pursuant to a motion filed by the Attorney General of the State of Texas to adjudge appellant in contempt of the court's temporary restraining order, issued an order for his attachment (R. 295–299).

At a hearing before District Judge Gardner on September 25, 1943, appellant moved to dismiss the complaint and quash the contempt proceedings on the ground that the Texas statute was unconstitutional (R. 299–302). The District Court overruled appellant's motion and found appellant guilty of contempt of court for "violation of the law and of the order of this court" and sentenced him to "imprisonment for a period of 3 days and a fine of One Hundred ($100.00) Dollars" (R. 308–309). Appellant, having been remanded to the custody of the Sheriff of Travis County, Texas, after sentence, filed a petition for

a writ of habeas corpus in the Supreme Court of Texas (R. 312–314) alleging, as he had in the trial court (R. 66–67, 304–308), that the statute was unconstitutional because, *inter alia*, it was in conflict with the provisions of the National Labor Relations Act (Appellant's brief before the Supreme Court of Texas, pp. 45–46). Upon posting a bond set by the Chief Justice of the Supreme Court of Texas, appellant was released from custody. After argument, the Supreme Court of Texas on October 27, 1943, entered its opinion and judgment sustaining the constitutionality of the statute, denying appellant's petition for a writ of habeas corpus, and remanding appellant to the custody of the Sheriff (R. 318–327).

In its opinion the court construed the registration requirement of the Texas statute to apply "only to those organizers [employees and non-employees alike] who for a pecuniary or financial consideration solicit" membership in a labor organization (R. 322), noted that "the Act does not require a paid organizer to secure a license, but merely requires him to register and identify himself and the union for which he proposes to operate before being permitted to solicit members for such union," and stated that the Act makes it the "mandatory duty" of the Secretary of State to "accept the registration and issue the card to all who come within the provisions of the Act upon their good-faith compliance therewith" (*id.*). The court found that "the Act

interferes to a certain extent with the right of the organizer to speak as paid representative of the Union" (R. 323) but held that such interference was not prohibited by the Constitution because the legislation constituted a reasonable exercise of the state's police power to protect "both the laborer and the union" (R. 322–323) against fraud arising from the following asserted facts:

> Not infrequently thousands of employees work at a single plant. It is impossible for them to know each other, or to know those who purport to represent the various unions. When a laborer is approached by an alleged organizer, it is impossible for him to know whether he is an impostor or whether he has authority to represent the Union which he purports to represent * * * It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union and pay his dues in order to be able to work on a particular job are the representations of an accredited agent of the union and that the promises of such representative will be respected and carried out by the union; and it is equally important to the union that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization, nor collect and squander funds intended for its use * * * (*id.*).

The court further held that although the statute dealt with a subject covered by the National Labor Relations Act, it was not superseded thereby: "The fact that the Federal Government has legislated on the subject under the commerce clause does not exclude the right of the State to legislate on the same subject under its police power" (R. 322). On November 24, 1943, the court denied appellant's motion for rehearing (R. 327-336).

SUMMARY OF ARGUMENT

The right of self-organization is a fundamental guarantee of the National Labor Relations Act. That right, as the Board has recognized, includes the right of employees, personally or through organizers, to solicit membership in labor organizations and to receive from others information and advice concerning such membership. The Act contemplates, in the light of experience under modern industrial conditions, that the services of organizers will be availed of by employees. The legislative history of the federal Act shows that Congress exhibited anxiety lest in the field of organization the activities of employees be hampered by indefinite legal concepts such as coercion, and that this anxiety was in contrast to its attitude with respect to the application of local laws dealing with violence and similar misconduct in the field of labor disputes. The issue is whether the

rights which are thus at the very core of the federal Act are unduly impaired by application of the provisions of the state law here challenged.

The state law discloses to employers the identity of paid union representatives and so makes available information which has often been the prelude to discrimination and reprisals by hostile employers, and which such employers have frequently sought to obtain despite the hazard of charges of unfair labor practices. The importance of nondisclosure to employers of the identity of union representatives at the critical formative stage of labor organization is reflected in the provision in the federal Act authorizing secrecy in the conduct of employee elections for bargaining representatives. Congress did not anticipate that with the enactment of the federal Act the repressive and hostile environment in which organizational efforts had been carried on would at once be dissipated; and the Board's experience shows that labor organizations still commonly encounter the same hazards. Congress has not determined that indiscriminate disclosure of the identity of labor organizers has become compatible with the exercise by employees of their right to freedom of self-organization.

In addition, the exercise of the right of self-organization often depends in large measure upon the promptness with which union representatives are able to answer the call of employees.

The delays consequent upon the registration provisions of the state law are likely to result in precluding the participation of organizers or fellow employees compensated for their efforts. Moreover, since the state law impedes the presentation of prounion views on the eve of employee elections, while permitting unrestrained antiunion appeals, the Board may find it necessary to mitigate the effects on the integrity of the election process by postponing elections or by setting them aside, and thereby be forced to sacrifice a measure of the stability which the election process is designed to achieve.

Whether the state law thus places an undue burden on rights guaranteed by the federal Act depends upon a practical judgment which takes into consideration the importance of the local interests protected by the local law. The state court regarded the law as one designed against fraud in the collection of dues and in representations concerning labor unions. It may be assumed that these are objectives for which proper measures may be framed in local legislation. The present statute, however, employs means which are related only indirectly to the collection of funds or to fraudulent misrepresentations. No registration or organizer's card is required as a condition to the collection of dues, and the latter function is in large part distinct from the organizing function and is most frequently per-

formed by different persons. It is a fairly common practice during the period of organization for unions to waive dues obligations until a collective bargaining relationship has been established. Nor does the statute deal directly with misrepresentations. Unpaid organizers or impostors may solicit memberships without cards, and the employees thus solicited have no way of determining the authenticity of the representations made. Paid organizers who do carry cards and who may make misrepresentations are not subjected to any sanctions by the state law other than those theretofore existing. These considerations are pertinent independently of the fact that so far as appears the state legislature did not have evidence before it showing that persons had in fact solicited memberships in labor organizations claiming to represent the organizations when in truth they did not, and there appears to have been no case in the history of the Board in which an employee's membership in a labor organization was challenged on the ground that the person who solicited him to join misrepresented himself to be a representative of the organization.

On balance, it is believed that the means adopted by the state law produce an impairment of federally protected rights which is quite disproportionate to the possible protection of the legitimate concerns of the state, and that conse-

quently the provisions of the state law here in question are inconsistent with the National Labor Relations Act.

ARGUMENT

The state statute as here applied is inconsistent with rights guaranteed by the National Labor Relations Act

The state statute as here applied places a prohibition upon the activity of labor organizers, as defined in the statute, who have not obtained registration cards from the Secretary of State. The question, to adopt the language of the Court in *Allen-Bradley Local 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 750–751, is whether "the freedom to engage in such conduct" is "so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy." In discussing this question we shall consider (1) the rights guaranteed by the federal Act, with particular reference to the right of self-organization and the place of the labor organizer in that process; (2) the respects in which the applicable provisions of the state law impinge on that right and on the administration of the federal Act; and (3) the interests which it is asserted are protected by the provisions of the state law.

1. *The rights guaranteed by the federal Act.*—

The National Labor Relations Act constituted an attempt to reverse, by statutory enactment, the long-standing practical denial of opportunities of self-organization and collective bargaining, in the realization that such denial had produced widespread industrial warfare and interferences with the flow of commerce. Both collective bargaining and freedom of self-organization are expressly guaranteed by the Act. These guarantees are the fundamentals of the Act. Section 1 declares the federal policy of "protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing." Section 7 declares that employees "shall have the right to self-organization, to form, join, or assist labor organizations." In part, the enforcement of these rights was committed to the National Labor Relations Board through its power of issuing appropriate orders directed against employers, enforceable by the courts. In part the guarantees were to be effectuated through the Board's supervision of employee elections and certification of bargaining representatives. In addition, the guarantees stand as a declaration of federal policy against which state action must be tested. Thus, apart from unfair labor practices by employers, state laws which prohibited self-organization by employees would undoubtedly fall before the provisions of the federal Act.

More particularly, the right of self-organization includes the right of employees, personally or through organizers, to solicit membership in labor organizations and to receive information from others concerning such membership. The right thus assured and protected, to urge the advantages of self-organization, to aid and assist other employees in forming labor organizations, to proselytize and solicit members on behalf of labor organizations, and the correlative right, recognized by the Board from its earliest days, "to receive aid, advice and information from others" concerning affiliation with labor organizations[3] are basic to the entire statutory scheme for the promotion of collective bargaining.

The Act contemplates that in the exercise of these rights employees will avail themselves of the services of organizers. S. Rep. 573, 74th Cong., 1st sess., p. 6. This has been the common practice in the United States (R. 26–32) from a period long before the Act was passed, and the necessity for such a practice is clear. Employees frequently cannot afford to risk their jobs by extensive participation in organizing activity. Furthermore,

[3] In *Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, 32, the Board stated: "The rights guaranteed to employees by the Act include full freedom to receive aid, advice, and information from others, concerning those rights and their enjoyment." See also, *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, enforced, 116 F. (2d) 816 (C. C. A. 6); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258.

under modern industrial conditions it has often been found that the type of unionism deemed appropriate can be promoted only by persons who devote their full time and knowledge to the task. Cf. H. Rep. 1147, 74th Cong., 1st sess., p. 10. The stabilization of competitive wage rates and working conditions within and between industries is a specific objective of the federal statute, declared in Section 1. In order to extend union organization to plants remote from the organized plants whose economic standards are threatened it has long been found necessary to designate representatives to conduct organizational activities. The Board has clearly recognized the place of freedom of solicitation in the rights guaranteed by the Act. In *Matter of Harlan Fuel Company,* 8 N. L. R. B. 25, 32, the Board said: "Interference * * * with the lawful conduct of organizational activities among employees by labor organizers is in derogation of rights secured employees under Section 7 of the Act."

Protection of the correlative right of employees "to receive aid, advice, and information from others concerning membership in labor organizations" is equally vital to the attainment of the statutory objectives.[4] The Board and the courts have recognized that that right is invaded where, for example, employers utilize their con-

[4] National Labor Relations Board, *Sixth Annual Report* (Gov't Print. Off., 1942), pp. 43–44.

trol over property on which employees work and live to bar contact with union representatives.[5] When an employer thus interferes with free access by his employees to organizers or by organizers to his employees, the Board issues a cease and desist order, coupled with such affirmative requirements as may appear proper. When such interference comes from sources other than an employer it may also be the basis for Board action. Thus, if an election is pending, the existence of interference from any source which precludes equal opportunities to all proper contestants will

[5] *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 31–32, 63 (employees living in company town denied access to union representative); *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 105–106, 133 (*idem*), enforced, 116 F. (2d) 816 (C. C. A. 6); *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 585–586 (*idem*); *Matter of Ozan Lumber Co.*, 42 N. L. R. B. 1073, 1081, 1084 (*idem*); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 270 (employees living in company-owned logging camp denied access to union representatives). Cf. *Matter of Waterman Steamship Corp.*, 7 N. L. R. B. 237, enforced, 309 U. S. 206, 224–226 (employees living aboard ship denied access to union representatives); *Matter of Cities Service Oil Co.*, 25 N. L. R. B. 36, 57 (*idem*), enforced, 122 F. (2d) 149, 152 (C. C. A. 2); *Matter of Richfield Oil Co.*, 49 N. L. R. B. 593 (*idem*), enforced, June 30, 1944 (C. C. A. 9); *Republic Aviation Corp.* v. *National Labor Relations Board*, 142 F. (2d) 193 (C. C. A. 2), petition for certiorari pending, No. 226, this Term; *LeTourneau Company of Georgia* v. *National Labor Relations Board*, 143 F. (2d) 67 (C. C. A. 5), petition for certiorari pending, No. 452, this Term.

cause the Board to postpone the election or to set it aside if it has already been held.[6]

While Congress has not made explicit the boundary between federal and state power with respect to activities of an organizational character, evidence is not wanting that Congress desired to protect this field from the varying conceptions of proper and improper conduct which might be reflected in local laws. Congress rejected a proposal to prohibit "employees and labor organizations * * * from interfering with, restraining, or coercing employees * * * in their choice of representatives." (79 Cong. Rec. 7668–7675). Both the Senate and House committees likewise refused to accept the proposed amendment. Their refusal was not based on the view that these activities were already, or could be, adequately regulated by the States, but on the view that prior restraints imposed upon the activities of "workers, employees, and labor organizations * * * would defeat the very objects of the bill." In explaining their rejection the committees termed the reasons advanced for the amend-

[6] Cf. *e. g.*, *Matter of Minneapolis-Moline Power Implement Co.*, 7 N. L. R. B. 840, 842–843; *Matter of National Tea Company*, 41 N. L. R. B. 774; *Matter of Curtiss-Wright Corp.*, 43 N. L. R. B. 795; *Matter of Kilgore Mfg. Co.*, 45 N. L. R. B. 468; *Matter of Sears Roebuck and Company*, 47 N. L. R. B. 291; *Matter of Continental Oil Co.*, 58 N. L. R. B., No. 33.

ment an "erroneously conceived mutuality argument" premised on the "untenable" assumption "that employees and labor organizations should be no more active than employers in the organization of employees" (S. Rep. No. 573, 74th Cong., 1st sess., p. 16; H. Rep. No. 1147, 74th Cong., 1st sess., p. 16). Prior restraints, as the committees pointed out, "would not merely outlaw the undesirable activities which the word [coercion] connotes to the layman, but would raise in Federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organizations" (*idem*). Congress did not intend by the omission of this prohibition from the bill to prevent the Board from adopting such rules aimed at securing free designations by employees as would protect employees against the use of misrepresentation, fraud and violence in obtaining memberships. The Board was vested with the power to investigate and certify the representative freely chosen by a majority of the employees in an appropriate unit. Pursuant to this power the Board necessarily must, whenever designations are challenged, determine whether misrepresentation, fraud or violence occurred.[7] The Circuit

[7] *Brotherhood of Railway & Steamship Clerks* v. *Virginian Railway Co.*, 125 F. (2d) 853, 857–858 (C. C. A. 4); *Matter of Sanco Piece Dye Works*, 38 N. L. R. B. 690, 708; *Matter of H. McLachlan & Co.*, 45 N. L. R. B. 1113, 1124–1125; *Matter of Wm. Tehel Bottling Co.*, 30 N. L. R. B. 440, 451, enforced, 129 F. (2d) 250, 254 (C. C. A. 8); *Matter of Dahlstrom Metallic Door Co.*, 11 N. L. R. B. 408, 412,

Court of Appeals for the Second Circuit summarized the Board's duties in this respect in *National Labor Relations Board* v. *Dadourian Export Corporation*, 138 F. (2d) 891, 892:

> * * * the statute [does not] sanction * * * the selection of a bargaining representative by such means. Fraud—which this was—will vitiate consent as well as violence, and the Board itself implies that a vote procured by violence should not be counted. It is quite true that only an employer can be guilty of "unfair labor practices," (§ 8), but § 7 confers the right on all employees freely to choose their bargaining representatives, and the invasion of that right is as much a wrong, when committed by a union organizer as by an employer. The fact that when it is not committed by an employer, the Board has no power to use its peculiar remedies to effectuate the policies of the act, must not blind us to the fact that those policies include employees' freedom from interference with their choice of representatives from any source whatever.

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enforced, 112 F. (2d) 759, 757–758 (C. C. A. 2); *Matter of Karp Metal Products Co.*, 12 N. L. R. B. 119, enforced, 134 F. (2d) 954, 955 (C. C. A. 2); *Matter of Van De Kamp's Holland-Dutch Bakers, Inc.*, 36 N. L. R. B., No. 135; *National Labor Relations Board* v. *Dadourian Export Co.*, 138 F. (2d) 891, 892–893 (C. C. A. 2); *Matter of Fisher Body Corporation*, 7 N. L. R. B. 1083, 1084–1092; National Labor Relations Board, *Third Annual Report* (Gov't Print. Off., 1939), pp. 150–156; *Second Annual Report* (Gov't Print. Off., 1937), p. 109.

The position of Congress with respect to the conduct of employees and labor organizations in connection with the choice of representatives is in contrast to its position with respect to employee misconduct during strikes and picketing in labor disputes. As this Court pointed out in the *Allen-Bradley* case, *supra*, the legislative history indicates that Congress designedly left open for state control the subject of violence and other excesses during labor disputes. The Senate committee, rejecting the suggestion that the Act should render illegal employee misconduct in labor disputes, as distinguished from employee misconduct in soliciting members, said: "The bill is not a mere police court measure. The remedies against such acts [fraud and violence during strikes and picketing by employees and labor organizations] in the State and Federal courts and by the invocation of local police authorities are now adequate as arrests and labor injunctions in industrial disputes throughout the country will attest." (S. Rep. No. 573, 74th Cong., 1st Sess., p. 16.)

We do not suggest that in the field of solicitation of membership the states are precluded from applying local laws for the punishment of violence, fraud, or extortion. What we do suggest is that Congress exhibited anxiety lest the organizing activities of employees be hampered by indefinite legal concepts such as coercion, and that this anxiety was in contrast to its attitude with respect to violence and similar misconduct

in labor disputes. The issue, then, is whether the new type of control embodied in the Texas statute operates as a substantial impairment of the rights which are the very core of the federal Act, so that its application would have been deemed by Congress to be inconsistent with the federal guarantees. We thus turn to a consideration of the respects in which the provisions in question impinge upon the exercise of those rights and upon the administration of the federal Act.

2. *Interference with freedom of self-organization.*—(a) *Anonymity.*—Whether the provisions of the state law interfere substantially with the right of self-organization is to be considered in the light of historical and recent experience, with which Congress has been fully familiar. It is widely recognized, and the cases before the Board show, that the participants in an organizational movement, particularly at the "critical formative stage" (*Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 349 (C. C. A. 8)), often take great pains to shield both the identity of the leaders and the fact that such a movement is in progress from the employer of the employees involved.[7] These

[7] *Matter of Security Warehouse & Cold Storage Co.*, 35 N. L. R. B. 857, 877 ("Elaborate precautions had been taken by the Union to keep the membership campaign a closely guarded secret. The union organizers had issued instructions that no activities were to be carried on during working hours, no union buttons displayed, and no disclosure of the names of persons who had joined was to be made even to other employees who were joining"), enforced, 136 F. (2d)

precautions are taken, of course, to avoid the possibility of reprisals by hostile employers and to secure an atmosphere in which the merits of self-organization can be considered by the employees free from restraining influences. The necessity of maintaining secrecy where it is suspected that the employer is hostile becomes evident by mere reference to the lengths to which

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829 (C. C. A. 9); *Matter of H. McLachlan & Co.*, 45 N. L. R. B. 1113, 1120–1121; *Matter of Revlon Products Co.*, 48 N. L. R. B. 1202, 1207–1208 ("In February 1941, the Union began secretly to organize the respondent's employees * * * When these employees pointed out the failure of previous attempts to organize * * * it was decided to keep secret the identity of [those] participating in the organizational activities"), enforced, July 29, 1944 (C. C. A. 2); *Matter of Century Projector Corp.*, 49 N. L. R. B. 636, 640 ("Shortly after being hired Morrison began attempts to organize the respondent's plant. He enlisted the cooperation of Persky, who in turn persuaded Decker to join with them in their effort. At first they attempted to conceal their union activities"), enforced, 141 F. (2d) 188 (C. C. A. 2); *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813, 818 ("La Salle was active in soliciting employees to join the Union; he did so secretively" * * *), enforced as modified, July 10, 1944 (App. D. C.); *Matter of National Container Corp.*, 57 N. L. R. B., No. 102 ("Solicitation of members proceeded quietly and secretively"); *Matter of Ohio Public Service Co.*, 52 N. L. R. B. 725, 735 ("Yingling and the others who were active in initiating the Union at the plant attempted to keep their activities from the attention of [the company officials]"), enforced, July 7, 1944 (C. C. A. 6); *Matter of Leland-Gifford Co.*, 48 N. L. R. B. 120, 125–126 ("For a period of more than a year [the employees] had been discussing the matter of 'getting the grinders together.' They had, however, exercised extreme caution in their conversations * * * They were extremely careful as to whom they talked for fear of speaking to a 'stooge' "). See also note 9, *infra*.

such employers have gone to ascertain the identity of union representatives.[*] Interrogation and

[*] See, generally, Report of the Senate Committee on Education and Labor, pursuant to S. Res. 266 (74th Cong.) (S. Rep. No. 46, 75th Cong., 2d Sess., part 3); Calkins, C., *Spy Overhead* (1937); Howard, Sidney, *The Labor Spy* (1924); Huberman, Leo, *The Labor Spy Racket* (1937). The reports of the National Labor Relations Board and the court opinions enforcing Board orders are replete with instances of espionage and surveillance. *National Labor Relations Board* v. *Link Belt Co.*, 311 U. S. 584, 588; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 251; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 230; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 54–55; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 270; *National Labor Relations Board* v. *Baldwin Locomotive Works*, 128 F. (2d) 39, 49 (C. C. A. 3); *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 646, 647 (App. D. C.); *Atlas Underwear Co.* v. *National Labor Relations Board*, 116 F. (2d) 1020, 1022–1023 (C. C. A. 6); *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 355, 358 (C. C. A. 8); *National Labor Relations Board* v. *General Motors Corp.*, 116 F. (2d) 306, 311 (C. C. A. 7); *Reliance Mfg. Co.* v. *National Labor Relations Board*, 125 F. (2d) 311, 314, 320 (C. C. A. 7); *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 474 (C. C. A. 3), certiorari denied, 309 U. S. 684; *National Labor Relations Board* v. *West Texas Utilities Co.*, 119 F. (2d) 683, 684 (C. C. A. 5); *Agwilines, Inc.*, v. *National Labor Relations Board*, 87 F. (2d) 146, 152 (C. C. A. 5); *National Labor Relations Board* v. *Planters Mfg. Co.*, 105 F. (2d) 750 (C. C. A. 1), enforcing 10 N. L. R. B. 735, 753; *National Labor Relations Board* v. *Brashear Freight Lines*, 119 F. (2d) 379, 381 (C. C. A. 8); *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. (2d) 85, 91–92 (C. C. A. 5); *National Labor Relations Board* v. *Quality Art Novelty Co.*, 127 F. (2d) 903, 905 (C. C. A. 2); *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295, 301 (C. C. A. 6).

espionage are often the prelude to discrimination,[10] beatings and bloodshed.[11]

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[10] *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 327; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 222; *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 118 F. (2d) 49, 50 (App. D. C.), certiorari denied, 313 U. S. 567; *National Labor Relations Board* v. *Bachelder*, 120 F. (2d) 574, 577 (C. C. A. 7), certiorari denied, 314 U. S. 647; *National Labor Relations Board* v. *Frezzo Bros.*, 95 F. (2d) 840, 841 (C. C. A. 4); *Matter of Hauck & Buck Co.*, 25 N. L. R. B. 837, 843–851, enforced, 120 F. (2d) 903, 905; *Matter of Planters Mfg. Co.*, 10 N. L. R. B. 735, 740–742, enforced, 105 F. (2d) 750 (C. C. A. 4); *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 670, 671 (C. C. A. 8); *Triple e Screw Co.* v. *National Labor Relations Board*, 117 F. (2d) 858, 861 (C. C. A. 6); *National Labor Relations Board* v. *Bank of America Assn.*, 130 F. (2d) 624, 628–629 (C. C. A. 9), certiorari denied, 318 U. S. 791; *National Labor Relations Board* v. *Eclipse Moulded Products Co.*, 126 F. (2d) 576, 579–580 (C. C. A. 7); *North Carolina Finishing Co.* v. *National Labor Relations Board*, 133 F. (2d) 714, 717–718 (C. C. A. 4), certiorari denied, 320 U. S. 738; *National Labor Relations Board* v. *Weirton Co.*, 124 F. (2d) 816, 817–818 (C. C. A. 7); *National Labor Relations Board* v. *Entwistle Mfg. Co.*, 120 F. (2d) 532, 535 (C. C. A. 4); *Matter of Consolidated Edison Co.*, 4 N. L. R. B. 71, 105–106, enforced, 305 U. S. 197, 230; *Montgomery Ward & Co.* v. *National Labor Relations Board*, 107 F. (2d) 555, 558–559, 560–564 (C. C. A. 7); *Press Co.* v. *National Labor Relations Board*, 118 F. (2d) 937, 942 (App. D. C.), certiorari denied, 313 U. S. 595.

[11] *Matter of Ford Motor Co. (Dallas)*, 26 N. L. R. B. 322, enforced as to this point, 119 F. (2d) 326, 327 (C. C. A. 5); *Matter of Goodyear Tire & Rubber Co.*, 21 N. L. R. B. 306, 447, enforced, 129 F. (2d) 661 (C. C. A. 5); *National Labor Relations Board* v. *General Motors Corp.*, 116 F. (2d) 306, 309 (C. C. A. 7); *Republic Steel Corp.* v. *N. L. R. B.*, 107 F.

Congress itself, in recognition that disclosure of the identity of union adherents endangers the free exercise of employee rights guaranteed in the Act, provided in Section 9 (c) for the safeguarding of anonymity by authorizing the Board to take a "secret ballot" to determine whether a majority of the employees in a particular unit desire to be represented by a union. In its Second Annual Report the Board announced (p. 110), quoting from its decision in *Matter of Samson Tire & Rubber Corp.*, 2 N. L. R. B. 148, that it was already "the established policy of the Board not to compel the union to produce * * * membership rolls for examination lest its members be exposed to possible discrimination by the

(2d) 472, 474 (C. C. A. 3), certiorari denied, 309 U. S. 684; *National Labor Relations Board* v. *Elkland Leather Co.*, 114 F. (2d) 221, 223 (C. C. A. 3), certiorari denied, 311 U. S. 705; *National Labor Relations Board* v. *Newberry Lumber & Chemical Co.*, 123 F. (2d) 831, 835 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786, 791 (C. C. A. 9), certiorari denied, 312 U. S. 678; *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494, 495–496 (C. C. A. 3); *National Labor Relations Board* v. *Tennessee Products Co.*, 134 F. (2d) 486 (C. C. A. 6); *National Labor Relations Board* v. *New Era Die Co.*, 118 F. (2d) 500, 504 (C. C. A. 3); *Reliance Mfg. Co.* v. *National Labor Relations Board*, 125 F. (2d) 311, 319 (C. C. A. 7); *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 F. (2d) 903, 910 (C. C. A. 8).

employer."[12] And the Board and the courts have invariably held that attempts by employers to ascertain the identity of union organizers and adherents, whether by questioning of employees,[13] by the use of labor spies,[14] by conducting straw

[12] Compare the statement of the United States Circuit Court of Appeals for the Fourth Circuit in *Brotherhood of Railway & Steamship Clerks* v. *Virginian Ry. Co.*, 125 F. (2d) 853, 858: "Certainly the Board should no more have given publicity to the names of those who had given authorization cards to the [union], and thus have subjected them to the danger of reprisal or discrimination, than it should have disclosed the votes of those participating in an employees' election."

[13] See, e. g., *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 518, 520; *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 73 App. D. C. 128, 118 F. (2d) 49, 50, certiorari denied, 313 U. S. 567; *National Labor Relations Board* v. *William Davies Co.*, 135 F. (2d) 179, 181 (C. C. A. 7), certiorari denied, 320 U. S. 770; *Texarkana Bus Co.* v. *National Labor Relations Board*, 119 F. (2d) 480, 483 (C. C. A. 8); *National Labor Relations Board* v. *Brenner Tanning Co., Inc.*, 111 F. (2d) 62 (C. C. A. 1); *National Labor Relations Board* v. *Quality Art Novelty Co.*, 127 F. (2d) 903, 905 (C. C. A. 2); *National Labor Relations Board* v. *Trojan Powder Co.*, 135 F. (2d) 337, 339 (C. C. A. 3), certiorari denied, 320 U. S. 768; *American Enka Corp.* v. *National Labor Relations Board*, 129 F. (2d) 60, 63 (C. C. A. 4); *National Labor Relations Board* v. *Rogers Paper Mill Co.*, 133 F. (2d) 988, 989 (C. C. A. 5); *Owens-Illinois Glass Co.* v. *National Labor Relations Board*, 123 F. (2d) 670, 672-673 (C. C. A. 6), certiorari denied, 316 U. S. 682; *National Labor Relations Board* v. *Montgomery Goods Mfg. Co.*, 125 F. (2d) 353, 355 (C. C. A. 7); *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. (2d) 585, 590 (C. C. A. 9); *Pueblo Gas & Fuel Co.* v. *National Labor Relations Board*, 118 F. (2d) 301, 307 (C. C. A. 10).

[14] See cases cited, *supra*, note 9, p. 23.

polls,[15] or by inquiring of the Chief of Police,[16] are violative of the rights guaranteed in Section 7 of the Act.

By requiring all paid representatives of labor organizations, employees as well as non-employees, to register before soliciting members for their organization, the Texas statute impairs the rights guaranteed by the Act and threatens their exercise in a manner which, if attempted by employers, would constitute an unfair labor practice. Registration as provided by the statute immediately discloses to hostile employers the identity of the most prominent representatives of the Union and makes them ready targets for reprisal.[17] Where the registrant is employed at

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[15] *International Ass'n. of Machinists* v. *N. L. R. B.*, 110 F. (2d) 29, 37 (App. D. C.), aff'd., 311 U. S. 72, 76 ("strange straw vote" * * * "going from man to man, asking his preference between A. F. L. and C. I. O., recording the 'votes' by tally mark on his sheet of paper"); *N. L. R. B.* v. *Colten*, 105 F. (2d) 179, 181–182 (C. C. A. 6) (semble); *N. L. R. B.* v. *New Era Die Co.*, 118 F. (2d) 500, 503–504 (C. C. A. 3) ("employer-sponsored 'poll'"); *N. L. R. B.* v. *Burry Biscuit Corp.*, 123 F. (2d) 540, 542, 543 (C. C. A. 7); *N. L. R. B.* v. *Harbison-Walker Refractories Co.*, 135 F (2d) 837, 838 (C. C. A. 8).

[16] *Matter of Agwilines, Inc.*, 2 N. L. R. B. 1, 6–7, enforced, 87 F. (2d) 146, 152 (C. C. A. 5).

[17] It is clear that the applications for registration cards filed with the Secretary of State pursuant to the statute immediately become matters of public record and as such may be perused by any interested person, including employers. This was unquestionably the intention of the state legislature for while the statute expressly provides that finan-

the plant, disclosure of his identity makes him vulnerable to discrimination and discharge. Where he is not employed at the plant, disclosure of his position is an equally effective barrier to self-organization; employees would hesitate to associate with or consult him about the exercise of their rights, since by so doing they would identify themselves as union adherents. In small communities the employer's influence may be so great as to result in ostracism of the organizer and consequent disruption of all organizational activity.[17] In sum the Texas statute makes it impossible for employees who receive financial compensation from a union to engage in

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cial reports to be filed by unions pursuant to Section 3 of the statute are to be "available only to the Secretary of State, the Commissioner of Labor Statistics and the Attorney General * * * [and] to grand juries and judicial inquiries in legal proceedings," there is no provision whatever for maintaining secrecy with respect to applications for organizers' cards pursuant to Section 5.

[17] See, *e. g.*, *National Labor Relations Board* v. *Elkland Leather Co.*, 114 F. (2d) 221, 223 (CCA 3), certiorari denied, 311 U. S. 705; *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 646, 650 (App. D. C.); *Reliance Mfg. Co.* v. *National Labor Relations Board*, 125 F. (2d) 311, 317 (CCA 7); *National Labor Relations Board* v. *General Motors Corp.*, 116 F. (2d) 306, 310 (CCA 7); *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 475–476 (CCA 3), certiorari denied, 309 U. S. 684; *National Labor Relations Board* v. *Newberry Lumber & Chemical Co.*, 123 F. (2d) 831, 835 (CCA 6); *National Labor Relations Board* v. *New Era Die Co.*, 118 F. (2d) 500, 504 (CCA 3); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786 (CCA 9), certiorari denied, 312 U. S. 678.

the organizational activities which the federal Act protects without exposing themselves or those with whom they associate to employer reprisal. A state cannot contrary to federal policy compel employees to take that risk.

In operation, the Texas statute not only discloses the identity of union adherents to employers, but also advises them when organizational activities among their employees begin. It is a common practice of employees, once the nucleus of an organization has been formed, to compensate one or more of their fellows for performing tasks incident to the growth of the organization. Such employees immediately assume the status of "labor organizers" under the Texas statute and must therefore register before they can continue to solicit members. (R. 74.) Obviously, their registration pursuant to the command of the statute notifies the employer that organizational activity is in progress at his plant and thus enables him promptly to adopt measures to defeat the movement at its weakest stage.

In many circumstances, of course, a requirement of disclosure is an appropriate and valid form of state regulation. Cf. *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, cited by the court below (R. 321–322). But the challenge to the regulation here is not predicated on its lack of reasonableness under the due process and equal protection clauses. We are dealing with a question of consistency with federal policy expressed in federal legislation. Moreover, the case does not in-

volve the broad issue of compulsory disclosure of union finances, officers, and the like, but the much narrower issue of disclosure of the identity of organizers—a matter intimately related to the free choice of employee representatives, which Congress has expressly authorized to be protected by individual nondisclosure even at the stage of determining whether a majority have chosen a representative. It is a subject, furthermore, which must be examined historically and not abstractly. It must be examined as was the state requirement of registration of aliens in *Hines* v. *Davidowitz*, 312 U. S. 52. There the Court, referring to Congressional history, observed (p. 71, n. 32): "The requirement that cards be carried and exhibited has always been regarded as one of the most objectionable features of proposed registration systems, for it is thought to be a feature that best lends itself to tyranny and intimidation."

It was not the view of Congress that upon the enactment of the federal Act the repressive and hostile environment in which labor organizing was commonly carried on in the United States would at once be dissipated. The Board's experience shows that labor organizations still commonly encounter the same hazards. And respondent has not contended that in the State of Texas acceptance of organizational activity has advanced beyond that in other parts of the country.[19] In any

[19] Within the two past years the Board has issued twenty-two Decisions and Orders (apart from cases concluded by

event, the federal Act must be administered, and its guarantees protected, on a uniform nation-wide basis, cf. *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, and it is for Congress to determine when the disclosure of the identity of labor organizers to employers shall happily have become compatible with the exercise by employees of their right of self-organization.[20]

settlement) in which it found that employees in the State of Texas had been interfered with, restrained, and coerced in the exercise of their rights under the Act in violation of Section 8 (1), and had been discriminated against for the purpose of discouraging membership in labor organizations in violation of Section 8 (3). These cases involve only unfair labor practices of the type which typically occur at the very inception of organizational activity and before a union has succeeded in gaining a foothold in the plant. They do not included cases in which employers have maintained company unions in violation of Section 8 (2) or have refused to bargain with unions within the meaning of Section 8 (5), the type of unfair labor practices most often associated with later stages of organizational activities.

[20] The Senate Committee on Education and Labor in a report filed June 5, 1944, stated (S. Rep. 398, part 5, 78th Cong., 2d Sess., p. 1694), with reference to recent state legislation:

"It is, however, our conclusion that all such proposed regulatory measures must and should be examined closely and deliberated upon carefully to make sure that under cover of regulation in the public interest an organized antiunionism is not foisting upon us legislation that will destroy or stifle the rights of labor that are fundamental to an economic democracy.

"We must distinguish between regulation *in the public interest and in the interest of antiunion employers.* Such insistence will result from public awareness rather than the self-imposed discipline of antiunion employers who provide the backbone of support for this type of law.

"It is our further conclusion that antiunion employer

(b) *Timeliness.*—The Texas statute deprives employees of rights protected by the National Labor Relations Act and impedes effectuation of the Act's basic policies in yet another respect. Under the Act, employees are guaranteed full freedom to engage in organizational activities at all times. The Texas statute, by preventing employees and their representatives from exercising those rights until a registration card shall have been issued to them by the Secretary of State, impairs that freedom. Nor is this impairment a negligible one. A registration card cannot be issued until the applicant has secured adequate credentials from the union, has obtained evidence of citizenship, has prepared an application and had it notarized and has dispatched the applica-

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groups, which, after seven years, refuse to accept finally the principles of industrial democracy, have sought and will continue to seek to shackle the rights of labor through legislation purporting to regulate labor union activities in the public interest. It is a bold but logical tactic for those who feel constrained by a national law that protects from coercion by employers the right of employees to organize and bargain collectively. Such tactics hold great dangers for the rights of labor and industrial democracy."

The National Labor Relations Board has recently had occasion to note the conflict of such legislation with the rights guaranteed by the Act. *Matter of Eppinger & Russell Co.*, 56 N. L. R. B. 1259; *Matter of Tampa Electric Co.*, 56 N. L. R. B. 1270; *Matter of Wisconsin Gas & Electric Co.*, 57 N. L. R. B., No. 53.

See Dodd, *Some State Legislatures Go To War—On Labor Unions*, 29 Iowa L. Rev. 148 (1944); Owens, *A Study of Recent Labor Legislation*, 38 Ill. L. Rev. 309 (1944).

tion, with credentials attached, to the Secretary of State (R. 46–47, 75). The applicant is not authorized to begin to exercise his rights under the federal Act even after these steps have been taken. Upon receipt of the application the Secretary of State must examine it to determine whether it has been properly filled out; he must also, if doubt is raised, investigate the credentials presented to determine whether the applicant has "authority to act as Labor Organizer for the labor union" (R. 47) which he claims to represent, whether the applicant is in fact a citizen of the United States, whether the applicant has been convicted of a felony, and, if so, whether his rights of citizenship have been "restored by proper authority" (R. 13). The Secretary of State testified in the instant case that he had already rejected 40 or 50 applications "where they failed to give all the information or failed to sign the application or failed to attach the credentials or some other such defect as that" (R. 14). Assuming sympathetic and efficient administration, a considerable period of time must elapse between presentation of the application and receipt of an organizer's card from the Secretary of State, during which the applicant is prohibited from advising or soliciting employees to join a labor organization.

The detrimental effects of such a time limitation upon organizational activities are readily apparent. The desire to organize often manifests

itself as a response to what employees consider unjust treatment by their employer. Sometimes their reaction may take the form of a stoppage from work.[21] To organize effectively under these circumstances the employees often call upon the representatives of a national labor organization which may have no headquarters in the state, or whose agents in the state may not be immediately

[21] In *Matter of Indianapolis Glove Co.*, 5 N. L. R. B. 231, 236, the Board stated: "The nine tippers were unorganized and could not be represented by a labor organization in the presentation of their grievances. The stoppage engaged in by them was a spontaneous expression of discontent staged for the purpose of bringing to the attention of the [employer] the grievance concerning wages * * *" "Long prior to the time that the term 'sit-down strike' became common parlance, stoppages such as that participated in by the nine tippers were frequent occurrences among unorganized laborers in the clothing and other industries. A stoppage was considered by the employees as the safest method of calling attention to their grievances without placing responsibility for leadership upon individuals. Without a labor organization or effective bargaining agency to represent them the fear of individual employees to assert leadership in the presentation of grievances for a group was usually well-founded." International Ladies' Garment Workers' Union, *Handbook of Trade Union Methods* (New York, 1937), p. 38: "Sometimes spontaneous strikes occur. Workers become so indignant over an incident or series of incidents in the shop that they leave their machines and walk out without any pre-arranged plan and only afterward call upon a union to take them in. This situation presents special difficulties, since organization must be perfected among an undisciplined group while the strike is going on." See, also, Chicago Joint Board, Amalgamated Clothing Workers of America, *The Clothing Workers of Chicago* (Chicago, 1922), p. 259; Editorial Research Reports, Volume 1, "*Control of the Sit Down Strikes*" (March 25, 1937), pp. 228–229.

available, for counsel and assistance in setting up their organization, in securing the participation of their fellow workers, and in adjusting their grievances. In this situation, the ability of the representative summoned from outside the state to aid the employees in the exercise of their rights, to contribute his knowledge and experience to the settlement of the dispute and thus to facilitate resumption of production, depends in large measure upon the promptness with which he is able to answer their call. If the workers are unable promptly to consult with and obtain the services of an informed specialist when their need arises, the result may well be dissipation of effort, internal dissension, prolongation of disputes, and consequent frustration of the policies of the Act. Yet, by virtue of the registration requirement, the employees, at the time they most need assistance, may be denied access to the only representatives of labor organizations who are qualified to assist them.

The time limitation is also disruptive of other aspects of organization. For example, should a group of employees in one plant call upon a fellow employee in an organized plant for aid in distributing organizational leaflets on a particular day, that employee, if he were compensated for his efforts, would become a "labor organizer" within the meaning of the statute (R. 74) and would be automatically disqualified from distributing the handbills until he had obtained an or-

ganizer's card from the Secretary of State. He would thereby effectively be precluded from participating in the organizing drive at a critical juncture in the exercise of the right of self-organization.

By impeding the presentation of prounion views immediately prior to Board elections, while permitting unrestrained antiunion utterances, the Texas statute impairs the opportunity of employees to exercise the informed choice necessary to assure that Board elections accurately reflect their true desires. The Board will doubtless find it necessary, in the exercise of its power to protect the integrity of its election process, to mitigate the effects of the interference and inequality created by the Texas statute by postponing elections until qualified union spokesmen become eligible to present their views to the employees, or to set elections aside if they have been held under circumstances which deprived the employees of necessary information and advice.

The possibility of wholesale registrations in advance does not remove these restraints on timely organizing efforts. The broad definition of labor organizer, including those who are merely authorized and not specially employed to solicit members, the practice of cooperation between local and national groups, and between unions in different industries, and the practice of designating employees on the spot in emergency situations, render advance registrations of doubtful practicality.

The problem must be appraised, of course, on the assumption that every state, if not each county and city, has an equal right to adopt the system here in question.

3. *Interests protected by the state statute.*—In determining whether local regulations may be sustained consistently with the commerce clause of the Constitution, this Court has observed that there must be a weighing of the interests protected by the local law as against its interference with the interests given protection by the commerce clause. *Parker* v. *Brown*, 317 U. S. 341, 362–363. In considering whether a state statute may be applied consistently with an Act of Congress, a similar analysis seems appropriate. We therefore examine the state statute to determine whether the interferences with the effectuation of the national policy, already discussed, are disproportionate to the protection of the legitimate concerns of the state.

The state court regarded the statute as a measure designed against fraud both in the collection of dues and in representations concerning labor unions. It may be assumed that there are measures which the states may take consistently with the National Labor Relations Act, to punish or to protect against fraudulent representations and to insure financial responsibility on the part of those who solicit or handle funds, including those of unions. The present statute, however, does not deal directly either with the solicitation or col-

lection of funds or with fraudulent misrepresentations. Its impact on this subject matter is at most an indirect one. The statute, therefore, raises the question of the limits to which the state may go, in view of the federal Act, to achieve its ends thus indirectly. If, for example, a state were to limit the number of union organizers in a plant to one or two, on the ground that greater responsibility would be secured with respect to funds and representations, it cannot be doubted that the restriction would be inconsistent with the guarantees of the federal Act.

When we turn to the present statute we find that its relation to the collection of union dues is remote. The registration requirement is not drawn in terms of the collection of funds. Paid "labor organizers," as the Secretary of State of Texas has officially ruled, are entirely free to collect dues or engage in any other activity on behalf of a union without becoming subject to the registration requirement provided they "wholly abstain * * * from the solicitation of memberships" (R. 74, 12–13). And, of course, impostors as well as unpaid, bona fide representatives of labor organizations, who are not subject to the registration requirement at all, remain entirely free to collect dues. Nor is there any such factual relation between the solicitation of membership and the collection of dues as would tend to make the regulation of solicitation, despite its effect on federal rights, a permissible method of controlling financial fraud. The dues

collection function is in large part distinct from the organizing function and is most frequently performed by entirely different persons. The objective of securing members for a labor organization is to achieve the status of exclusive bargaining representative authorized to secure collective bargaining agreements with employers. The attainment of that objective does not depend upon the payment of dues since the right of a labor organization to represent employees depends entirely upon whether the employees have authorized the organization to represent them and not on whether they have paid dues.[22] Indeed, it is fairly common practice during the period of organization for unions to waive dues obligations until collective bargaining relationships have been established.[23]

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[22] *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 338–339; *National Labor Relations Board* v. *Chicago Apparatus Co.*, 116 F. (2d) 753, 756 (C. C. A. 7); *National Labor Relations Board* v. *Somerset Shoe Co.*, 111 F. (2d) 681, 687 (C. C. A. 1); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9). See National Labor Relations Board, *Second Annual Report* (Gov't. Print. Off., 1937), p. 92.

[23] Many C. I. O. unions follow this practice; see cases cited, note 22, *supra*. The practice of the United Retail, Wholesale, and Department Store Employees of America (C. I. O.) has been summarized as follows: "No dues or initiation fees are collected from members until contracts are signed with [the] employer. It is not an uncommon practice in an organizing compaign for a new union to waive charges in this manner." 572 Business Week, p. 36 (August 17, 1940). As to the similar practice of the United Steel Workers of America, see Brooks, Robert R. R., *As Steel Goes* (1940), p. 117.

The second rationale for the legislation suggested by the state court is that it tends to protect employees from signing a membership card at the instance of a person who claims to be the representative of a labor organization which he does not in truth represent. We may assume that such danger of misrepresentation exists, although we are not aware that the state legislature had any evidence indicating that persons have solicited membership in labor organizations claiming to represent the organizations when in fact they did not; nor are we aware of any case in the history of the Board in which an employee's membership in a labor organization was challenged on the ground that the person who solicited him to join misrepresented himself to be a representative of the organization. If such a danger exists, the means adopted by the statute to meet it entails an interference with freedom of solicitation which is quite disproportionate to the protective effect of the statute. Bona fide representatives of labor organizations are not required to secure registration cards prior to soliciting members, provided they receive no financial compensation from the organization they represent. Consequently, when an employee is approached and asked to join a labor organization by a person who does not carry an organizer's card, he has no way of determining whether or not he is being solicited by an authorized representative of the organization.

The third rationale suggested is that it tends to protect employees against misrepresentation of

the functions and purposes of labor organizations which they are asked to join. The Texas statute contains no provision dealing specifically with fraud or misrepresentation. Nor does the registration provision in itself erect a greater safeguard against misrepresentation concerning the functions and purposes of the organization than existed prior to the statute. There is no provision in the statute for revocation of cards or any other sanction against misrepresentation.

The provision which limits the issuance of organizers' cards to citizens was not relied on by the court below, nor could it have been. This provision could not, for two reasons, serve to support the state law against the objection that it is inconsistent with the National Labor Relations Act. In the first place, the provision with respect to aliens, like that with respect to persons convicted of felony, does not simply prevent members of the designated class from acting as paid labor organizers. It imposes restrictions upon the activities, and requires disclosure of, all organizers; and it is thus, for the reasons already considered, incompatible with the guaranties of the federal Act. Secondly, the federal Act guarantees freedom of self-organization to employees without regard to citizenship. The decisions of the Board reveal that the problem of the self-organization of alien workers is a substantial one in the grant of the right of collective bargaining to all employees protected by the National Labor Relations Act. *Matter of Peyton Packing Company, Inc.*, 32 N. L. R. B. 595, enforced

142 F. (2d) 1009 (C. C. A. 5), petition for certiorari pending No. 298, this Term; *Matter of Lone Star Bag and Bagging Company*, 8 N. L. R. B. 244, 249, 251, 258; *Matter of Azar and Solomon*, 8 N. L. R. B. 1164, 1166–1167; *Matter of Logan and Paxton*, 55 N. L. R. B. 310, n. 12; *Matter of Edinburg Citrus Association*, 57 N. L. R. B., No. 174; cf. *Matter of Jefferson Lake Oil Company*, 16 N. L. R. B. 355, 370.

In sum, the registration requirement of the state law imposes obstacles to the exercise of federal rights which are disproportionate to the possible protection afforded the legitimate interests of the state. Despite the wide latitude which the state would otherwise have in devising measures to meet local problems, the existence and supremacy of the federal statute require, it is believed, the conclusion that the provisions of the state law here involved cannot be sustained.

CONCLUSION

For the reasons stated it is respectfully submitted that the provisions of the state law here in question are inconsistent with the National Labor Relations Act.

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SEPTEMBER 1944.

APPENDIX A

The pertinent provisions of House Bill No. 100, Act 1943, 48th Legislature, Chapter 104, page 180 (Vernon's Annotated Texas Statutes, Article 5154a) are as follows:

> SECTION 1. *Preamble of Public Policy.*— Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.
>
> It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereinafter set forth.
>
> SEC. 2. Definitions * * * (c) "labor organizer" shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union; * * *
>
> Sec. 4a. [Limitation on Union Officials.] It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person

who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

* * * * *

SEC. 5. *Organizers.*—All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, "labor organizer"; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

APPENDIX B

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

> SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.
>
> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of com-

petitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choos-

ing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 9.

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the repre-

sentatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

U. S. GOVERNMENT PRINTING OFFICE: 1944